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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5405
DATE COMPLAINT FILED: January 27, 2004
DATE OF NOTIFICATION: February 3, 2004
DATE ACTIVATED: September 27, 2004

EXPIRATION OF SOL: March 3, 2008

COMPLAINANTS: Gerald L. Jaecks

RESPONDENTS: Daniel W. Hynes
Hynes for Senate
Apex Healthcare, Inc.
James Chao
Charissa Chao
Grace Chao
Philip Chao
Dawn Burdelik
Jeffrey Burdelik
Kin S. Cheung
Sharon Linares
Lawrence Yip
Amy Yuen
Monica Fletcher
Douglas Fletcher
Marion Steng
Frances Mattivi
Mei Fung Choi

RELEVANT STATUTES: 2 U.S.C. § 434(b)
2 U.S.C. § 441b(a)
2 U.S.C. § 441f

INTERNAL REPORTS CHECKED: Disclosure Reports; Commission Indices

FEDERAL AGENCIES CHECKED: None

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1 **I. INTRODUCTION**

2 This matter originated with a complaint filed by Gerald L. Jaecks alleging that Apex
3 Healthcare, Inc. ("APEX"), violated the Federal Election Campaign Act of 1971, as amended
4 ("the Act") by participating in a contribution reimbursement scheme. The Complainant alleges
5 that: (1) APEX, through its principal officer, James Chao ("Chao"), "knowingly" made
6 prohibited corporate contributions to Hynes for Senate, the principal campaign committee
7 supporting the election of Daniel W. Hynes to the U.S. Senate for Illinois in 2004, by
8 reimbursing Chao's contributions and the contributions of others in violation of 2 U.S.C.
9 §§ 441b(a) and 441f; and (2) Hynes and Hynes for Senate are "legally responsible" for accepting
10 and receiving the alleged corporate contributions made in the name of another.

11 In a joint response, APEX and Chao admit reimbursing all of the contributions made by
12 Chao's family members, APEX employees, and their family members to Hynes for Senate, but
13 deny that APEX reimbursed Chao's contributions. In a supplemental Submission (the
14 "Submission"), APEX and Chao disclose additional contributions to Hynes for Senate made in
15 the names of others that were reimbursed with corporate funds as well as a direct in-kind
16 contribution made by APEX to Hynes for Senate. Furthermore, the Submission contains
17 information regarding earlier contributions in the names of others made by APEX and Chao to
18 other federal campaign committees in 2002.¹

¹ Counsel for APEX and Chao styled the Submission as a settlement offer and requested that the Commission maintain the confidentiality of the information contained therein pursuant to Federal Rule of Evidence 408. This Office does not believe that the Submission constitutes a bona fide settlement offer made for negotiation. In addition to the fact that Rule 408 does not apply to this proceeding and the Commission has not yet authorized this Office to enter into pre-probable cause conciliation, the Submission does not include a specific settlement offer. Under the circumstances, this Office believes that the confidential label counsel placed on the Submission does not prevent the
(cont'd)

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As more fully set forth below, available information indicates that APEX and Chao engaged in activities that constitute corporate reimbursement of contributions in violation of 2 U.S.C. §§ 441b and 441f as well as a single direct corporate in-kind contribution in violation of 2 U.S.C. § 441b. Moreover, there is information to suggest these violations were knowing and willful. With respect to Mr. Hynes and Hynes for Senate, available information suggests that these respondents did not possess the requisite knowledge necessary to be subject to liability for accepting or receiving prohibited contributions. *See* 2 U.S.C. §§ 441b(a) and 441f. Nevertheless, it appears that Hynes for Senate failed to report the in-kind contribution made by APEX in violation of 2 U.S.C. § 434(b).

II. FACTUAL SUMMARY

A. BACKGROUND

James Chao is a United States citizen residing in Naperville, Illinois, a suburb of Chicago. *See* Submission, at 2. Chao is the President and sole shareholder of APEX. *See id.* at 3. APEX is a subchapter S corporation that provides claims processing services to hospitals and medical practices in the Chicago area. APEX employs between 35 and 40 individuals. *See id.* Prior to incorporating APEX, Chao owned Metro Provider Services Corp., a similar corporation in the health care industry. *See id.* at 2.

Chao is an experienced political contributor. In 1994, according to state disclosure records, he apparently began contributing to state political campaigns. *See* Illinois State Board of Elections. In 1997 and 1998, he contributed a total of \$4,500 to federal candidates running for

document's inclusion on the public record once the matter is closed. The information contained in the Submission responded to the allegations contained in the complaint, formed a basis for this Office's recommendations, and was apparently intended for the Commission's consideration on the substantive issues of the case.

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1 office in Illinois. *See* FEC Contributor Database. In 1998, as permitted under state law, Metro
2 Provider Services Corp. contributed \$9,605 to Friends of Dan Hynes, the state committee
3 established to support Daniel Hynes's candidacy for Illinois state comptroller. *See* Illinois State
4 Board of Elections. Metro Provider Services Corp., and later APEX, continued to contribute to
5 Friends of Dan Hynes from 1999 to 2003. *See id.* In addition, APEX employees and their family
6 members donated \$33,000 to Friends of Dan Hynes from June 2000 to November 2002. *See id.*

7 **B. THE FACTS**

8 In early 2003, Daniel Hynes announced his candidacy for the U.S. Senate from Illinois.²
9 According to the Submission, Chao attended the announcement, where Hynes approached Chao
10 and asked how much money he could raise to support his principal campaign committee. *See*
11 Submission, at 6. Chao responded that he could raise between \$15,000 and \$20,000 in the first
12 quarter of 2003. *See id.* Daniel Hynes and Chao reportedly had similar conversations in each
13 quarter of 2003, and Chao continued to respond that he could raise the same amount in each
14 subsequent quarter. *See id.*

15 In a joint response, APEX and Chao admit using corporate funds to reimburse \$48,000 in
16 contributions to Hynes for Senate made by others. *See* Response, at 2. APEX and Chao claim,
17 however, that APEX did not reimburse the personal contributions made by Chao to Hynes for
18 Senate. *See id.* at 2-3.

19 As mentioned *supra*, APEX and Chao also filed the Submission, which contains
20 significantly more information than APEX and Chao provided in their formal response to the
21 complaint. The Submission contains detailed information relevant to the allegations contained in

² Hynes ultimately placed second in the Democratic primary to Barack Obama.

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1 the complaint, admissions as to most of the allegations, the disclosure of similar violations that
2 were not alleged in the complaint, and a request for pre-probable cause conciliation. APEX and
3 Chao admit to making a total of \$89,500 in contributions to Hynes for Senate in 2003, \$29,500
4 more than alleged in the complaint. *See* Submission at 2, 7. Of this amount, APEX and Chao
5 admit reimbursing a total of \$69,500 in contributions from family members, APEX employees,
6 or their family members. *See id.*, at Ex. A. Chao solicited these contributions by approaching
7 family members or APEX employees and asking them to make a contribution (and/or have a
8 family member make a contribution), which he reimbursed with either an APEX corporate check
9 or cash.³ *See id.* at 5. According to the Submission, at the end of each quarter, Chao would
10 gather all of the monetary contributions to Hynes for Senate and hand-deliver them to Hynes for
11 Senate's office. *See id.* at 7. Chao gave the contributions directly to the campaign manager,
12 Matthew Hynes, or to someone else in the office if he was not available. *See id.*

13 APEX and Chao deny reimbursing the remaining \$18,500 in contribution to Hynes for
14 Senate. They claim that Chao personally contributed \$14,000 to Hynes for Senate and his wife,
15 Annie Ma Chao, contributed an additional \$4,500 to the committee.⁴ *See id.*, at 7. In both cases,
16 Chao contends that the contributions came from personal funds. *See id.* In support of this claim,
17 Chao provides personal checks to Hynes for Senate that either he or his wife signed. *See id.*, at
18 Ex. D.

³ In addition to the individuals identified in the complaint as allegedly being reimbursed, the Submission names Frances Mattivi, an APEX employee, and Jeff Burdelik, Marian Steng and Mei Fung Choi, relatives of APEX employees, as having contributions to Hynes for Senate reimbursed with APEX funds. *See* Submission, at Ex. A.

⁴ Hynes ran against Blair Hull, who spent \$29 million of his own money in the primary, thus invoking the Millionaire's Amendment. Based on Hull's campaign expenditures, the contribution limit for individuals increased to a total of \$14,000 (\$12,000 for the primary and \$2,000 for the general election). *See* 2 U.S.C. § 441a(1)(1)(c)(iii).

1 APEX and Chao contributed the remaining \$1,500 to Hynes for Senate by supplying the
2 campaign with office furniture free of charge. According to the Submission, in the fall of 2003,
3 Hynes for Senate approached Chao and asked if he had any used furniture he could contribute
4 because the Hynes campaign increased the size of its campaign staff and office space. *See id.*, at
5 7. Chao agreed and provided desks from APEX's offices and a brand new sofa and refrigerator
6 that he purchased with APEX corporate funds. *See id.* Hynes for Senate did not disclose this in-
7 kind contribution in any of its FEC filings.⁵

8 APEX and Chao state that to the best of their knowledge, "neither Daniel Hynes nor
9 anyone associated with Hynes for Senate was aware that the contributions identified above were
10 reimbursed." Response, at 3. According to Chao, he did not tell Matthew Hynes that he
11 reimbursed the contributors and kept this information from the Hynes campaign because Chao
12 wanted to enhance his own importance by demonstrating he could generate a large number of
13 contributions. *See Submission*, at 7. *See id.*

14 In addition to the contributions to Hynes for Senate that APEX and Chao reimbursed, the
15 Submission identifies contributions to other federal committees that were reimbursed in 2002.
16 According to the Submission, while working on Hynes's state reelection campaign in 2002,
17 Matthew Hynes approached Chao and asked him to contribute or solicit contributions for the
18 federal campaigns of Marty Castro, Bill Nelson, and Mark Shriver. *See Submission*, at 6.
19 According to Chao, Matthew Hynes wanted to build a base to assist his brother in a potential
20 federal race. *See id.* Chao agreed to help and solicited contributions from APEX employees and

⁵ Hynes for Senate did not respond to this allegation because APEX and Chao disclosed the contribution for the first time in the Submission, rather than in the response to the complaint.

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1 their relatives with the promise that he would reimburse them for the full amount of the
2 individuals' contributions. *See id.* Chao claims to have raised a total of \$6,000 in 2002 for the
3 federal candidates identified by Matthew Hynes. *See id.* All told, APEX and Chao admit to
4 using corporate funds to make \$77,000 in contributions to federal candidates in 2002 and 2003,
5 which are specifically identified in the chart below:

DATE	CONTRIBUTOR	RELATIONSHIP	AMOUNT	CANDIDATE/ORGANIZATION
02/19/02	Monica Fletcher	Sharon Linares's mother	\$1,000	People for Marty Castro
02/21/02	Marian Stang	Dawn Burdelik's mother	\$1,000	People for Marty Castro
09/06/02	Jeffrey Burdelik	Dawn Burdelik's husband	\$1,000	Citizens for Mark Shriver
09/06/02	Frances Mattivi	APEX employee	\$1,000	Citizens for Mark Shriver
10/08/02	Dawn Burdelik	APEX employee	\$1,000	Bill Nelson for Senate
10/08/02	Sharon Linares	APEX employee	\$1,000	Bill Nelson for Senate
03/05/03	Dawn Burdelik	APEX employee	\$4,000	Hynes for Senate
03/05/03	Kin Cheung	APEX employee	\$4,000	Hynes for Senate
03/05/03	Sharon Linares	APEX employee	\$4,000	Hynes for Senate
03/05/03	Lawrence Yip	APEX employee	\$4,000	Hynes for Senate
06/30/03	Grace Chao	James Chao's mother	\$6,000	Hynes for Senate
06/30/03	Monica Fletcher	Sharon Linares's mother	\$4,000	Hynes for Senate
06/30/03	Marian Stang	Dawn Burdelik's mother	\$4,000	Hynes for Senate
09/29/03	Dawn Burdelik	APEX employee	\$2,000	Hynes for Senate
09/29/03	Charissa Chao	James Chao's sister-in-law	\$4,000	Hynes for Senate
09/29/03	Philip Chao	James Chao's brother	\$4,000	Hynes for Senate
09/29/03	Kin Cheung	APEX employee	\$4,000	Hynes for Senate
09/29/03	Monica Fletcher	Sharon Linares's mother	\$2,000	Hynes for Senate
09/29/03	Sharon Linares	APEX employee	\$2,000	Hynes for Senate
09/29/03	Marian Stang	Dawn Burdelik's mother	\$2,000	Hynes for Senate
09/29/03	Amy Yuen	Lawrence Yip's wife	\$4,000	Hynes for Senate
10/03	James Chao	In-kind (furniture)	\$1,500	Hynes for Senate
12/30/03	Dawn Burdelik	APEX employee	\$1,700	Hynes for Senate
12/30/03	Kin Cheung	APEX employee	\$1,800	Hynes for Senate
12/30/03	Monica Fletcher	Sharon Linares's mother	\$1,900	Hynes for Senate
12/30/03	Sharon Linares	APEX employee	\$1,600	Hynes for Senate
12/30/03	Marian Stang	Dawn Burdelik's mother	\$1,800	Hynes for Senate
12/30/03	Amy Yuen	Lawrence Yip's wife	\$1,600	Hynes for Senate
12/31/03	Grace Chao	James Chao's mother	\$2,000	Hynes for Senate
12/31/03	Mei Fung Choi	Kin Cheung's wife	\$1,400	Hynes for Senate
12/31/03	Lawrence Yip	APEX employee	\$1,700	Hynes for Senate
		Total	\$77,000	

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1 In their joint response to the complaint, Daniel Hynes, Hynes for Senate and Jeffrey
2 Wagner, as treasurer, deny knowingly accepting contributions in the name of another. *See Hynes*
3 *Response*, at 2. In a supporting affidavit, Matthew Hynes attests that he never discussed making
4 contributions in the name of another with Chao and never suggested to Chao or any contributor
5 that Hynes for Senate would accept a contribution in the name of another. *See id.*, at Ex. 1.

6 **III. LEGAL ANALYSIS**

7 **A. APEX AND CHAO**

8 APEX and Chao acknowledge reimbursing contributions made by others with corporate
9 funds. *See Response*, at 2; *Submission*, at 2.

10 Corporations are prohibited from making contributions or expenditures from their general
11 treasury funds in connection with any election of any candidate for federal office. 2 U.S.C.
12 § 441b(a). In addition, section 441b(a) prohibits any officer or director of any corporation from
13 consenting to any expenditure or contribution by the corporation. The Act also provides that no
14 person shall make a contribution in the name of another person or knowingly permit their name
15 to be used to effect such a contribution. 2 U.S.C. § 441f.

16 APEX and Chao admit reimbursing \$48,000 of the contributions identified in the
17 complaint. *See Response*, at 2. In the *Submission*, they also identify \$6,000 in contributions
18 made in 2002 and an additional \$21,500 in contributions made in 2003 that they reimbursed with
19 APEX funds. *See Submission*, at 2.

20 At the same time, APEX and Chao deny using corporate funds to reimburse \$18,500 in
21 personal contributions made by Chao and his wife to Hynes for Senate. *See Response*, at 2-3. In
22 support of this claim, they provide personal checks issued on a joint account held with Chao's

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1 wife. *See* Submission, at Ex. D. While the checks demonstrate that Chao did not use corporate
2 funds to make direct contributions to Hynes for Senate, they do not refute the allegation that
3 APEX reimbursed Chao. Nevertheless, there is no available evidence indicating that APEX
4 reimbursed Chao for these contributions. "Unwarranted legal conclusions from asserted facts . . .
5 or mere speculation, . . . will not be accepted as true." Statement of Reasons in MUR 5141
6 (Moran for Congress, issued March 11, 2002). Furthermore, given that Chao has been forthright
7 by admitting most of the allegations in the complaint and disclosing \$27,500 in additional
8 reimbursed contributions, there is no reason to doubt his veracity on this point.

9 In the Submission, APEX and Chao also disclose that APEX contributed approximately
10 \$1,500 in furniture to Hynes for Senate in October 2003. *See* Submission, at 7. Thus, APEX and
11 Chao admit using corporate funds to make a direct in-kind contribution to Hynes for Senate in
12 violation of 2 U.S.C. § 441b.

13 Available information suggests that APEX and Chao knowingly and willfully violated the
14 Act. The knowing and willful standard requires knowledge that one is violating the law. *See*
15 *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985,
16 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the
17 defendant acted deliberately and with knowledge that the representation was false." *United*
18 *States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act
19 may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at
20 214-15.

21 APEX and Chao do not explicitly deny knowingly and willfully violating the Act, but
22 instead justify their actions by arguing that: 1) Chao had a limited understanding of federal

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1 election law and relied on the Hynes campaign to inform him of the Act's requirements, *see*
2 Submission, at 4; 2) Illinois law permits corporations to contribute in state elections, *see id.*; 3)
3 APEX's tax status as a subchapter S corporation created confusion between corporate and
4 personal funds, *see id.*; 4); Chao wanted to hide the extent of his political contributions from his
5 wife, who in 1998, in response to a downturn in business, urged him to reduce his political
6 contributions, *see id.*; 5) he was motivated by a desire to participate in the democratic process
7 and not by personal benefit, *see id.*; and 6) he wanted to keep a low profile to avoid requests for
8 funds from other candidates. *See id.* at 5.

9 Irrespective of these justifications, this Office believes that there is a sufficient basis for
10 finding reason to believe that APEX and Chao knowingly and willfully violated the Act. Most
11 significantly, Chao was an experienced contributor who admits that he not only "knew that he
12 could not use corporate funds for federal contributions" and that there were general limitations
13 on the amount of money he could contribute as an individual, but knew the specific limitations
14 on his individual contributions through repeated contact with the Hynes campaign about
15 precisely how much he could contribute under the Millionaires' Amendment. *See* Submission, at
16 2, 4. Therefore, even if he believed that his S corporation funds counted as his personal funds,
17 Chao had to have known that he had already contributed the maximum amount to Hynes for
18 Senate in individual contributions.

19 Nevertheless, available information suggests that Chao did not view his personal funds
20 and APEX's funds as one and the same. In fact, in challenging the allegation that he used APEX
21 funds to reimburse personal contributions to Hynes for Senate, Chao defended himself by
22 producing personal checks written to Hynes for Senate. *See id.*, at Ex. D. The use of personal

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1 checks illustrates that he knew the difference between a permissible personal contribution and a
2 prohibited corporate contribution, regardless of APEX's tax status.⁶

3 Similarly, the claim that he used conduits solely to hide contributions from his wife is
4 also unconvincing. While Chao did curtail his contributions to federal campaigns between 1998
5 and 2001, Chao continued to give money on the state level. From 1998 to 2001, APEX directly
6 contributed \$12,605 to Friends of Dan Hynes. *See* Illinois State Board of Elections. Similarly,
7 APEX employees contributed \$15,000 to Friends of Dan Hynes during the same time period.⁷
8 *See id.* Nevertheless, the fact that Chao may have been motivated partially by a desire to deceive
9 his wife does not contradict the appearance that he knew that what he was doing violated the Act.

10 Finally, Chao's argument that he used conduits because he wanted to keep a low profile
11 indicates a willful desire to hide the true source of his contributions. Furthermore, this
12 explanation appears at least potentially inconsistent with Chao's acknowledgement that he
13 promised to raise large sums of money because he wanted "to convince the Hynes campaign that
14 he could generate significant contributions from his network, in order to enhance his own
15 importance." *Id.* at 7.

16 In short, APEX and Chao's explanations appear to be nothing more than rationalizations.
17 Instead of justifying their actions, they simply obscure the fact that neither APEX nor Chao could
18 have a good faith basis to believe that APEX could do indirectly what the Act prohibited the

⁶ The Act does not distinguish between subchapter S corporations and other corporations in the context of the blanket prohibition of corporate contributions. All corporations "receive from the state the special benefits conferred by the corporate structure and present the potential for distorting the political process." *Austin v Michigan Chamber of Commerce*, 494 U.S. 652, 661 (1990)

⁷ Chao admits reimbursing state contributions with corporate funds as well, but did not disclose the time period, amounts, or number of contributions. Contributions in the name of another are not permitted under Illinois law.

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1 corporation from doing directly. However, based on the totality of circumstances, particularly
2 APEX and Chao's forthright responses and full cooperation in this matter, this Office does not
3 recommend at this time that the Commission find that APEX and Chao knowingly and willfully
4 violated the Act. In response to the complaint, APEX and Chao not only admitted to making
5 corporate reimbursements, but came forward with additional violations, not identified in the
6 complaint, that increased the amount in violation. In addition, they provided all the information
7 necessary to determine the nature and scope of their violations. This level of cooperation made
8 an investigation unnecessary, which will allow the Commission to direct its limited resources to
9 other matters.

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12 Therefore, this Office recommends that the Commission find reason to believe that
13 APEX and Chao violated 2 U.S.C. §§ 441b(a) and 441f by making \$75,500 in contributions in
14 the names of others and using corporate funds to reimburse the contributions and violated
15 2 U.S.C. §§ 441b(a) and 441f by making an in-kind contribution of \$1,500 with corporate funds.

16 **B. HYNES AND HYNES FOR SENATE**

17 APEX and Chao's admission that they used corporate funds to reimburse contributions
18 made by various family members, APEX employees, and their family members and make an in-
19 kind contribution to Hynes for Senate leads to the corollary conclusion that Hynes for Senate
20 received contributions in the names of others and received contributions from corporate funds.

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1 Under the Act, it is impermissible to knowingly accept or receive a contribution made by a
2 corporation. *See* 2 U.S.C. § 441b(a). Furthermore, “no person shall knowingly accept a
3 contribution made by one person in the name of another.” 2 U.S.C. § 441f.

4 In this instance, Chao claims that he did not tell anyone in the Hynes campaign the true
5 source of the contributions. *See* Response, at 3; Submission, at 5, 7. In addition, Matthew Hynes
6 provided an affidavit stating that to his knowledge Hynes for Senate never accepted a
7 contribution in the name of another and at no time suggested to Chao that Hynes for Senate
8 would accept a contribution in the name of another. *See* Hynes Response, at Ex. 1. All of the
9 checks delivered by Chao were personal checks from multiple individuals. It therefore does not
10 appear that Hynes for Senate had any information indicating that the contributions solicited by
11 Chao were impermissible.

12 With respect to the in-kind contribution of furniture, the Submission does not set forth
13 any evidence to suggest that Hynes for Senate knew or should have known that APEX was the
14 source of the contribution. Matthew Hynes asked Chao if he could contribute any used furniture,
15 and Chao responded by gathering some desks from APEX’s offices and purchasing additional
16 items with corporate funds. *See* Submission, at 7. Nevertheless, while Hynes for Senate may not
17 have knowingly accepted a corporate contribution, their disclosure reports do not contain any
18 record of the contribution. The Act requires the treasurer of a political committee to report all
19 contributions received by or on behalf of the political committee including the identification of
20 any person who makes a contribution, or contributions aggregating more than \$200 during a
21 calendar year. *See* 2 U.S.C. §§ 432(c)(1) and 432(c)(2). Hynes for Senate did not disclose the
22 \$1,500 in-kind contribution identified in the Submission and therefore violated the Act.

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Based on the information currently available, this Office recommends that the Commission find no reason to believe that Daniel Hynes, Hynes for Senate, or Jeffrey Wagner, as treasurer, violated 2 U.S.C. §§ 441b(a) or 441f by knowingly accepting corporate contributions or contributions in the name of another. Nevertheless, this Office recommends that the Commission find reason to believe that Hynes for Senate and Jeffrey Wagner, as treasurer, violated 2 U.S.C. § 434(b). However, given the relatively small size of the violation, this Office recommends that the Commission take no further action, and send an admonishment letter instructing Hynes for Senate to disgorge all of the impermissible contributions.⁹

C. OTHER RECIPIENT COMMITTEES

Under the Act, no person shall knowingly accept or receive a corporate contribution or a contribution made by one person in the name of another. *See* 2 U.S.C. §§ 441b(a) and 441f. In the case of the contributions made to People for Marty Castro, Bill Nelson for Senate, and Citizens for Mark Shriver, Chao claims that he gave Matthew Hynes the contributions he solicited and never interacted with the recipient committees. *See* Submission, at 6. The contributions were in the form of checks written by APEX employees and their family members, and Chao claims he never told Hynes that he reimbursed the contributors. *See id.* The recipient committees therefore likely had no reason to believe the contributions were reimbursed with corporate funds.

Given the relatively small amounts at issue, it may not be an appropriate use of the Commission's resources to conduct a formal investigation into which candidates or committees, if any, had the requisite knowledge to violate 2 U.S.C. §§ 441b(a) or 441f. Therefore, this Office

⁹ To date, it does not appear that Hynes for Senate has disgorged or returned any of the relevant contributions.

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1 recommends that the Commission take no action against People for Marty Castro and Amalia S.
2 Rioja, as treasurer, Bill Nelson for Senate and Peggy Gagnon, as treasurer, or Citizens for Mark
3 Shriver, and Kristin Gerlach, as treasurer, except to send a letter notifying them that they
4 received contributions in violation of 2 U.S.C. §§ 441b and 441f and requiring disgorgement.

5 **D. CONDUITS**

6 Various relatives of James Chao, APEX employees, and their family members
7 contributed to federal campaign committees with an assurance from James Chao that he would
8 reimburse their contributions. Consequently, those individuals knowingly permitted their names
9 to be used to effect contributions in the name of another in violation of 2 U.S.C. § 441f.

10 As part of the Submission, APEX and Chao attached affidavits from six of the conduits,¹⁰
11 all of whom admit to the violation, but claim they did not know what they were doing was
12 prohibited by law. *See, e.g.*, Submission, at Ex. C. They appear to be individuals unfamiliar
13 with campaign finance law who attest under oath that they contributed based on the belief that
14 Chao did not want other political candidates to know how much money he was contributing. *See*
15 *id.*

16 Accordingly, this Office recommends that the Commission find reason to believe that
17 Charissa Chao, Grace Chao, Philip Chao, Dawn Burdelik, Jeffrey Burdelik, Kin S. Cheung,
18 Sharon Linares, Lawrence Yip, Amy Yuen, Monica Fletcher, Douglas Fletcher, Marion Steng,
19 Frances Mattivi, and Mei Fung Choi violated 2 U.S.C. § 441f by permitting their names to be
20 used to effect contributions in the name of another, but take no further action other than sending
21 the appropriate admonishment letters. *See* pre-MUR 358 (Future Tech) (Commission found

¹⁰ Dawn Burdelik, Kin Cheung, Monica Fletcher, Sharon Linares, Marian Stang, and Lawrence Yip provided affidavits

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1 reason to believe but took no further action against conduits who contributed with the knowledge
2 that they would be reimbursed).

3 **IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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V. **RECOMMENDATIONS**

1. Find reason to believe that APEX Healthcare, Inc. and James Chao violated 2 U.S.C. §§ 441b(a) and 441f;
2. Enter into conciliation with APEX Healthcare, Inc. and James Chao prior to a finding of probable cause to believe, and approve the attached Conciliation Agreement;
3. Find no reason to believe that Daniel Hynes, Hynes for Senate and Jeffrey C. Wagner, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f, and send a letter requiring disgorgement;
4. Find reason to believe that Hynes for Senate and Jeffrey C. Wagner, as treasurer, violated 2 U.S.C. § 434(b), take no further action and send an admonishment letter;
5. Take no action against People for Marty Castro, and Amalia S. Rioja, Treasurer; Citizens for Mark Shriver, and Kristin Gerlach, Treasurer; Bill Nelson for Senate, and Peggy Gagnon, Treasurer, except to send a letter notifying them that they received contributions in violation of 2 U.S.C. §§ 441b and 441f and requiring disgorgement once the case is closed;
6. Find reason to believe that Charissa Chao, Grace Chao, Philip Chao, Dawn Burdelik, Jeffrey Burdelik, Kin S. Cheung, Sharon Linares, Lawrence Yip, Amy Yuen, Monica Fletcher, Douglas Fletcher, Marion Steng, Frances Mattivi, and Mei Fung Choi, violated 2 U.S.C. § 441f, but take no further action and send an admonishment letter;
7. Approve the attached Factual and Legal Analyses;

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8. Approve the appropriate letters, including letters of admonishment and letters requiring disgorgement.

Lawrence H. Norton

General Counsel

1/14/05
Date

BY:

Lawrence Calvert, Jr.
Deputy Associate General Counsel

Ann Marie Terzaken
Assistant General Counsel

Adam Schwartz
Attorney

Attachments:

1. Proposed Conciliation Agreement with Apex Healthcare, Inc. and James Chao
2. Apex Healthcare, Inc. Factual and Legal Analysis
3. James Chao Factual and Legal Analysis
4. Sample Conduit Factual and Legal Analysis